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January 17, 1991

**TELECOPY**

Mr. Steven Siegel  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region V  
230 South Dearborn Street  
Chicago, IL 60604

Mr. Alan Held  
Environmental Enforcement Section  
Department of Justice  
Room 1541  
10th and Pennsylvania Avenue NW  
Washington, DC 20530

Mr. Brad Bradley  
U.S. Environmental Protection Agency  
Region V  
230 South Dearborn Street  
Chicago, IL 60604

Re: NL Industries/Taracorp Granite City, Illinois

Dear Gentlemen:

Thank you for meeting with us on January 15, 1991. We would like to emphasize that the PRPs seriously desire to settle their potential liabilities and effectuate an expeditious and protective remedy at the NL/Taracorp, Granite City Superfund Site. We are hopeful that mutually acceptable terms can be defined to enable a settlement between EPA and the potentially liable parties. We believe that we may be able to achieve a global settlement and make the following proposal. This proposal is made on behalf of the following companies: NL Industries, Allied-Signal, Exide, Johnson Controls, General Motors, Phillip Brothers, and Ford.

In order to achieve a global settlement, we have renewed our contacts with NL Industries. We believe that we have reached an agreement in principle, among the generators and NL, and this proposal is premised on the understanding that we will

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proceed with negotiations to enter into a global consent decree, including NL and generators.

The global settlement is predicated on EPA allowing the PRPs to perform a tilling pilot project that will explore the possibility of using tilling as a possible remedy for areas at the site with soil-lead concentration above 500 ppm. Conversely, if tilling is not considered a global settlement is not possible. Accordingly, we request your comments and response at your earliest possible convenience.

As Mr. Nassif discussed in his January 9, 1990 letter and during our meeting, the consideration of tilling will not delay the implementation of the remedial design. Estimates by the PRPs indicate that the tilling project could be completed during the remedial design phase of the response action. We believe an appropriate and acceptable protocol for a tilling study can be developed that will include a firm timeline so that we can be sure that the project is completed in sufficient time for agency review.

We understand that the agency would require the inclusion of procedures and criteria for review of the tilling study in any consent decree that was entered into. While we understand that the agency would reserve the final decision on the acceptability of tilling, Mr. Nassif's letter may present some useful concepts for structuring the project. We would appreciate the opportunity to explore acceptable options.

If, upon completion of the tilling pilot study, it is determined that tilling is not an acceptable remedy for the Granite City Site, the PRPs would agree to continue with the completion of the remedy as specified in the ROD.

You raised several substantive and procedural concerns with pursuing a study of tilling. Perhaps most importantly, you indicated that EPA does not consider tilling to be protective of public health. The effectiveness of tilling cannot be determined until further study is completed. If tilling reduces concentrations of lead in the soil by a factor of six, or seven, or thirteen, as was the experience of Exide at its Selma, Alabama facility, tilling should be considered an effective remedy.

Tilling is, in fact, a permanent remedy. Once the concentration of lead in the soil is reduced to a point where

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there is no danger to human health or the environment, that lead will never again present a health threat. Conversely, if the soils are piled at the Granite City Site (or any other place) that pile may continue to be a threat. Considering that lead is ubiquitous and a natural element that cannot be destroyed, tilling may be the only remedy that presents a permanent elimination of the health risks.

Another apparent EPA concern is that tilling has not been selected in a ROD as a remedy at any other site. While our research indicates that this may be true, this cannot be considered an appropriate consideration. Every new remedy will have to be performed for the first time at some site. Tilling should be considered and, if appropriate, implemented at Granite City. The fact that tilling has not been used at other Superfund sites is irrelevant. A tilling study would also present an opportunity to explore, at this time, a new remedial approach, in accordance with the statutory goals expressed in CERCLA. See 42 U.S.C. § 9621(b)(2).

You stated that review of the remedy at this stage could be considered as setting an inappropriate precedent for other sites. Considering that the National Contingency Plan provides for post-ROD modifications, it is clear that such review and alteration of remedial decisions is expected and will be required under certain circumstances. See 40 C.F.R. § 300.825. In the present situation, our proposed study and review of tilling seems warranted for several reasons. First, it appears to be a mechanism by which past procedural and substantive defects in EPA's decision process can be cured to the satisfaction of the parties. This will allow the remedy to proceed now, without the delay, expense and burden of litigation. If the parties litigate, a court may well remand to the agency for further proceedings, resulting, after the expense and delay of litigation, in the same position that the PRPs appear willing to engage in now. See e.g. Rohm & Haas, 669 F.Supp. 672 (D.N.J. 1987).

As we have stated previously, the procedures followed at the this Site have failed to provide Exide and other generator PRPs with the notice and "reasonable opportunity to comment and provide information" that is required by section 113(k)(B) of

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CERCLA.<sup>1/</sup> Nonetheless, it appears that the defects might be cured to the satisfaction of all parties while at the same time proceeding with the remedy.

Your assertions that tilling was not raised in a timely manner as an appropriate remedy for consideration at Granite City should not preclude consideration while the remedial design progresses. During our meeting yesterday we indicated, and you did not disagree, that the generators proposed tilling as a possible remedial alternative during the special notice period. For most of the generators, the special notice letter was the first notice that the ROD had been issued for comment, much less as a final decision document. Accordingly, we raised our position at the earliest time that EPA's notice would allow.

In Rohm & Haas, the parties were afforded much greater notice and opportunity to comment than was afforded in this case. Nonetheless, the court remanded the remedial decision to the agency for further review and directed the agency to include "all potentially responsible parties that the agency intends... to name as defendants." 669 F.Supp. at 684. We see no purpose to be served by having the record remanded for further review. We would prefer to proceed expeditiously with the remedial design and the studies necessary to determine whether tilling will provide a more appropriate remedy for certain areas at this site.

We hope that EPA will seriously consider this opportunity to settle this case. We are ready to act as expeditiously as necessary to effectuate such a settlement. If necessary for purposes of negotiation of the details of this proposal and for organization of PRPs, we would encourage EPA to extend the effective date of the 106 Order.

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1/ Other significant challenges to EPA's actions exist and have been identified previously. We do not recite them here because the purpose of this letter is to seek settlement and an expeditious implementation of an appropriate remedy.

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Please call if you have comments or questions. We would appreciate an expeditious response to this proposal.

Very truly yours,



David G. Butterworth

DGB/cmb

cc: Sandra Conner  
Daniel Bicknell  
Mark Hester  
Mark Kamilow  
Joseph Nassif  
Alan Schlesinger  
Judy McCarthy  
Janet Smith  
Steven Tasher